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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 514

JAMES ODDIE, EDWARD CWIERTNIEWICZ,
JOHN PENZAK, OSCAR KING,
HARRY C. BREMMER,
Petitioners,

v.

ROSS GEAR AND TOOL COMPANY, INC.,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITIONERS' BRIEF IN REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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ARGUMENT

We file this reply brief to call the Court's attention to an arbitration decision handed down on October 10, 1962, and first published on November 9, 1962, subsequent to the filing of the petition herein: *Sivyer Steel Casting Co.*, 39 Lab. Arb. 449.[1]

[1] Also published since the filing of the petition herein is a comprehensive comment on some of the questions involved in the instant case, Levett, *Treatment of Monetary Fringe Benefits and Post Termination Survival of the Right to Job Security*, 72 Yale L. J. 162 (Nov. 1962).

The significance of the decision lies in the fact that in it the arbitrator follows the new rule of collective bargaining contract interpretation enunciated by the Sixth Circuit in the instant case. The decision is, therefore, concrete evidence that the Sixth Circuit, in interpreting the collective bargaining contract in the instant case, laid down a general rule of interpretation and did not merely make a "determination of intention from undisputed facts[2] [which] does not have general application nor . . . represent a federal question of special and important effect", as Respondent argues.[3]

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[2] Throughout its brief Respondent places elaborate emphasis on its history of bargaining with the Union and argues that it is one of the factors upon which the court below based its interpretation of the contract. The court itself, however, made it plain that this is *not* what it did; that, instead, it based its interpretaton exclusively on the language of the recognition clause and, after having completed its interpretaton, noted that it appeared to be in accord with the parties' bargaining history:

> "The collective bargaining agreement provides that the Company recognizes the Union as the exclusive representative 'of its employees in its plant or plants which are located in that portion of the greater Detroit area which is located within the city limits of Detroit for the purposes of collective bargaining, * * *' *This is plain, unambiguous language.* The agreement gave seniority and 'recall-to-work rights to employees in the defendant's plants which were within the city limits of Detroit. It gave no such rights to employees of a plant in Tennessee." (Petition, p. 44; emphasis supplied)
>
> *"The construction which we are presently giving to the collective bargaining agreement appears to be in accord* with the construction also given to it by the Union until shortly before the filing of this action." (Petition p. 48; emphasis supplied)

In these statements the court made it absolutely clear that its interpretation of the contract was based on the language of the recognition clause and not on bargaining history and would have been the same had there been no bargaining history at all. The court also made it clear that similar recognition clauses will receive the same interpretation.

[3] Brief for Respondent, p. 23.

Respondent, in addition to arguing that the Sixth Circuit did not lay down a general rule of interpretation in the instant case, appears to go

(Continued on next page)

The new rule of collective bargaining contract interpretation laid down by the Sixth Circuit in the instant case and followed by the arbitrator in *Sivyer* is the one discussed

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so far as to argue that in fashioning the federal law of collective bargaining contracts the courts are not to fashion general rules of interpretation but are, instead, to apply the ordinary rules of interpretation applicable to other types of contracts:

> "The Petitioners ask the Court to '* * * review general rules of interpretation for two of the most basic provisions found in all collective bargaining contracts: the recognition clause and the senority provision'. *But the general rules for interpretation of these provisions and all provisions of collective bargaining agreements have been laid down.* . . ." (Brief for Respondent, pp. 20-21; emphasis supplied)

This Court has made it clear that the body of substantive law the lower federal courts and state courts are to fashion in response to the *Lincoln Mills* directive is to include general rules for the interpretation of this special kind of contract, the collective bargaining contract. In *United Steel Workers v. American Manufacturing Co.*, 363 U.S. 564, 567, the Court was quite explicit:

> "In our role of developing a meaningful body of law to govern *the interpretation* and enforcement of collective bargaining agreements . . . ." (Emphasis supplied)

And in *Local 174, Teamsters Union v. Lucas Flour Co.*, 369 U. S. 95, 103-04, the Court made this comprehensive statement about the importance of the rules of interpretation to be included in the new body of law:

> "More important, the subject matter of §301(a) 'is peculiarly one that calls for uniform law.' [Citations omitted]. The possibility that *individual contract terms might have different meanings* under state and federal law would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements. Because neither party could be certain of the rights which it had obtained or conceded, the process of negotiating an agreement would be made immeasurably more difficult by the necessity of trying to formulate contract provisions in such a way as to contain the same meaning under two or more systems of law which might someday be invoked in enforcing the contract. Once the collective bargain was made, the possibility of *conflicting substantive interpretation* under competing legal systems would tend to stimulate and prolong disputes as to its *interpretation*. [Citation omitted]. Indeed, the existence of possibly conflicting legal concepts might substantially impede the parties' willingness to agree to contract terms providing for final arbitral or judicial resolution of disputes." (Emphasis supplied)

under Question No. 2 in the petition.[4] It is the rule that the recognition clause of a collective bargaining contract (in addition to describing the bargaining unit of employees represented by the recognized union and covered by the contract) has the implied function of delineating the geographic area within which those employees can exercise their seniority-recall rights. As elaborated upon in the petition, this rule assigns to the provision which is the keystone of all collective bargaining contracts and has a traditional, specialized function a completely new, implied function which it has never before been regarded as having.

In *Sivyer* the employer's plant was located in Chicago. The employer was forced to vacate it when it became certain that a new expressway would run through the land on which the plant was standing. The operations of the plant were moved to an existing plant in Bettendorf, Iowa. The union claimed, among other things, that the seniority-recall rights the Chicago employees had at the Chicago plant would not be cut off by the movement of the plant's operations to Bettendorf so that they could exercise them there and would be entitled to recall at Bettendorf when the Chicago operations resumed there.

The arbitrator rejected this claim and in doing so consciously followed the course of collective bargaining contract interpretation inaugurated by the Sixth Circuit in the instant case. In answering the question of whether the Chicago employees' seniority-recall rights were cut off by the move to Bettendorf or continued to adhere to the plant at its new location, the arbitrator completely ignored the seniority provisions of the contract and went straight to the recognition clause. It read:

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[4] Petition, pp. 22-28.

> "The Company agrees to recognize the Union as the sole collective bargaining agency for all production and maintenance employees in the Chicago, Illinois plant."[5]

He compared it to the recognition clause the Sixth Circuit interpreted in the instant case:

> "The Company recognizes the Union as the exclusive representative of its employees in its plant or plants which are located in that portion of the greater Detroit area which is located within the city limits of Detroit."

He noted that the Sixth Circuit's ruling that the recognition clause placed limitations upon the employees' seniority-recall rights was in conflict with the Second Circuit's *Glidden*[6] rule that recognition clauses do not perform that function.[7] Although later noting a factual distinction between *Glidden* and the case before him, he followed the Sixth Circuit and found that the reference to "Chicago" in the Sivyer recognition clause implied that the employees could not exercise their seniority-recall rights at Bettendorf.

* * * * *

The geographic formula employed in the recognition clause of the contract in the instant case is a typical one found in many collective bargaining contracts:

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[5] 39 Lab. Arb. at 454.

[6] *Zdanok v. Glidden Co.*, 288 F. 2d 99 (2d Cir. 1961), *cert. granted on other grounds*, 368 U. S. 814.

[7] "The Second Circuit Court of Appeals majority held the *Glidden* phrase was not language of limitation, but merely described the location of the plant. . . .

"If there is a federal law under Section 301 of the National Labor Relations Act applicable to this court[*sic*], the Court of Appeals of the the Second Circuit reads it one way and the Court of Appeals of the Sixth Circuit another." 39 Lab. Arb. at 454.

> The company recognizes the union as the exclusive representative of its employees in its plant or plants located in ———— (a particular city, part of a city, county, state, etc.).[8]

It has been clear since July 16, 1962, when the Sixth Circuit handed down its decision in the instant case, that unless this decision is reviewed and reversed employees in the states of the Sixth Circuit who work under collective bargaining contracts with recognition clauses that employ the above geographic formula have seniority-recall rights which will be cut off if their plants are moved beyond the described geographic area, even though there is no language in their contracts which says so.

The *Sivyer* case, however, indicates that the sweep of the Sixth Circuit's rule of implication is likely to be far broader than this—broad enough, indeed, to reach *all* contracts with recognition clauses that include *any* type geographic reference, even the simplest one, such as the one in *Sivyer:*

> The company recognizes the union as the exclusive bargaining representative of its employees in its plant at ———— (city, state).

A rule which will have an impact on so many employees, employers, and unions is an important rule which should be reviewed.

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[8] "Recognition of the union in new plants is sometimes mentioned in contracts. Recognition may be automatic in plants established *within a specified area*—or it may be negotiable." (Emphasis supplied). 2 BNA Collective Bargaining Negotiations and Contracts (Basic Patterns in Union Contracts) 70:61 (1960).

Conclusion

In the Sixth Circuit, under the rule of the instant case, recognition clauses have the new, implied function of delineating the geographic area within which employees can exercise their seniority-recall rights.

In the Second Circuit, under *Glidden*, and the Third Circuit, under *Viking*,[9] recognition clauses clearly do not have this new function.

In *Lucas Flour* this Court said:

> "*The possibility that individual contract terms might have different meanings* under state and federal law would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements."[10] (Emphasis supplied)

We submit that the present conflict between the Sixth Circuit and the Second and Third Circuits as to the meaning and basic function of recognition clauses has already and will continue to "exert a disruptive influence upon both the negotiation and administration of collective agreements", unless resolved by this Court.

Respectfully submitted,

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Dated: November 21, 1962.

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[9] *Metal Polishers Union v. Viking Equipment Co.*, 278 F. 2d 142 (3d Cir. 1960). The conflict on this rule between the Sixth Circuit and the Second and Third Circuits is discussed in the petition at pp. 25-28.